

TOWN OF NEW WINDSOR

ZONING BOARD

June 27, 2011

MEMBERS PRESENT: PAT TORPEY, ACTING CHAIRMAN
RICHARD HAMEL
HENRY SCHEIBLE
FRANCIS BEDETTI

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

NICOLE JULIAN
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE

REGULAR MEETING:

MR. TORPEY: I'd like to call to order the June 27, 2011 meeting of the New Windsor Zoning Board of Appeals.

PRELIMINARY MEETINGS:

APRIL KEAN (11-4)

MR. TORPEY: First one will be April Kean request for a sign variance on Brittany Terrace. Listen, what we do here is we're going to have our preliminary then we're going to have it open to the public, you know, meeting so you're going to go through the first one, tell her what your name is and all the good stuff and then just explain to us what you need and want.

MS. KEAN: My name is April Kean, I'm representing Brittany Terrace Manufactured Housing Community for people 55 and over on Station Road. And since the late '60s, we have actually had a sign at the end of Station Road and in some form or other so approximately 40 plus years there has been a sign there and it's just now become recognized by the Town of New Windsor and that's why I'm standing here before you today.

MR. TORPEY: This is the church sign, right, blue one?

MS. KEAN: It's actually on church property but the sign has been there for almost 40 years.

MR. KRIEGER: Okay, the property that it's actually physically on is owned by the church?

MS. KEAN: That's correct.

MR. KRIEGER: By the Little Britain?

MS. KEAN: That's correct, it's always been church property and has been there in some form or other though the sign has evolved in the description over the course of years but we have always maintained the property that it's been on and so here I am at the bequest of the town asking permission to have a sign on the church's property.

MR. TORPEY: For 40 years?

MS. KEAN: Yes, so and because of that, I'm asking actually if we can waive the public hearing because I'm thinking the public has no problem after 40 years us having a sign there.

MR. TORPEY: I wish it was that easy, it's not a big process.

MS. KEAN: We do have a sign, I know it's due process but we do have a sign at the other end of town. Actually, what happened was the state came through and asked us to license plate as the state does and I just put in a request to the town here and, you know, saying please check the box and low and behold going back they didn't have a record from 40 years ago of us having a sign there and this is how this whole process started.

MR. TORPEY: It's pretty simple, just go to a little meeting.

MS. KEAN: I agree with you but, you know.

MR. TORPEY: This way you'll be legal, you'll be fine, nobody can bother you.

MS. KEAN: I always did think we were legal.

MR. SCHEIBLE: Just curious, April, you say you have the sign?

MS. KEAN: Yes.

MR. SCHEIBLE: But here's the church property and you're over here, I'm just hypothetical, it's not the sign, the actual sign is not on Brittany Terrace property?

MS. KEAN: The sign is on church property with church permission.

MR. SCHEIBLE: Is that a written agreement?

MS. KEAN: It's always been a handshake agreement as was done back in the day.

MR. SCHEIBLE: Let me ask our attorney, she said that's a handshake agreement, Mr. Attorney, and there's never been an official handwritten agreement on this, I'm, just so I'm clear in my own mind.

MR. KRIEGER: I don't know how, quite frankly, I don't know how you're going to wind up proving a handshake agreement or disproving it, I mean, it's, you know. Now, let me ask you this, was the sign there prior to 1966?

MS. KEAN: Yes, when my parents first moved up here and

officially started Brittany Terrace prior to the change of the actual intersection of--

MR. KRIEGER: I don't care about the change of the intersection, was it in place prior to January 1, 1966?

MS. KEAN: Yes.

MR. KRIEGER: Question number two is can you have somebody testify to that at the public hearing? Understand this, the Zoning Board of Appeals by law and this is state law has to do everything at a public hearing, they can't, they have no power to waive the public hearing, just simply can't do that, has to be a public hearing. If they accept the testimony on the record of somebody who says I was here January 1st of '66, whether it's your parents or somebody else, I don't care, it's up to the, in terms of the, I don't care in terms of it being legally sufficient whether the zoning board accepts that testimony or not is up to them at that time but if it predates zoning then it's grandfathered in.

MR. TORPEY: But the sign, this is not the original sign, that's a brand new one.

MS. KEAN: Well, the sign has been in the place, it has of course been maintained and it has been--

MR. TORPEY: But it got knocked down.

MS. KEAN: It has never been knocked down but it has been evolved and maintained and painted.

MR. KRIEGER: Would change from time to time but there's been a sign continuously of approximately the same size?

MS. KEAN: Yes, I was a small child back in 1966 so I would have to ask my parents that question.

MR. KRIEGER: As long as, as I said, as long as there's testimony that it was in place prior to January 1, 1966 which is when zoning came into being and the zoning board accepts that testimony there's proof and it's grandfathered in and can't be touched. Now alternatively if the text was changed, it doesn't matter if it was, that's okay if it was continuous as long as the same, it's approximately the same size, same place so we have a continuous occupancy since

prior to zoning. That's number one. Number two, while the existence of a sign on somebody else's property is not something that the zoning board can waive however because it's on the church's property if you have somebody from the church come in and testify that they receive rent and that the rent goes into the general fund of the church, somebody who's credible enough that the zoning board will accept their testimony, then it becomes arguably a religious use which means that basically we can't touch it. My advice to you quite frankly is as long as you got to go to a public hearing, present both arguments, it doesn't cost you anything extra, you never know which one is going to be successful so present everything you've got.

MS. KEAN: Okay.

MR. KRIEGER: So for the public hearing, you'll need a person to testify to its existence prior to '66 and its continuous existence thereafter and you'll need somebody to testify that they receive rent for the sign and the rent goes into the general funds to support the church.

MS. KEAN: Okay.

MR. KRIEGER: And--

MR. TORPEY: We're not going to hurt you, we're here to help you, that way you're all clear, you have paperwork.

MR. SCHEIBLE: We're talking about one or two signs, what's that smaller sign?

MS. KEAN: That's the other people that don't seem to be here tonight, that's the other two developments.

MR. TORPEY: That's a real estate sign.

MS. KEAN: They're permanent signs, those are the other two developments on the road.

MR. SCHEIBLE: Are they renting that space the church?

MS. KEAN: No, but they're really permanent signs also that's Fox Farms and--

MR. TORPEY: It's for houses.

MR. KRIEGER: Whether or not they're permanent they're not yours.

MS. KEAN: No.

MR. KRIEGER: For this purpose, that's a moot point, they're not yours, whether they are in fact in violation is another matter altogether which is not in front of the zoning board at this point.

MS. KEAN: We trim all the trees.

MR. KRIEGER: If you decide for commercial reasons obviously because it advertises your business.

MS. KEAN: Sure, but we also take very good care of that corner.

MR. KRIEGER: It does but what I'm saying I'm not accusing you of anything, what I am saying you have dual motivation to take care of that, one of the motivations is you're own self interest which is fine, everybody has one, that's what you're in business for, there's nothing wrong with that. So I think she's all set for the final.

MR. BEDETTI: I have a question. If I recall last time this issue came before the board here there was some question who's actually submitting the application in view of the fact that the sign is not on their property, it's on the church's property and that the waiver goes with the property that the applicant for this variance should come from the church and not from--

MS. JULIAN: I have all of that updated.

MR. KRIEGER: Yes, and my understanding is correct but my understanding is the application has been redone provided there are proxies on file anybody can represent them.

MR. BEDETTI: Okay, that was a question. What's changed from last time we had the discussion?

MS. JULIAN: All new proxies and the application changed.

MR. KRIEGER: Yeah, the applicant should be the church speaking through them by proxy.

MR. BEDETTI: Understand, okay, so that's what we have there now so the church is actually the applicant now?

MR. KRIEGER: Yes.

MR. TORPEY: Yes.

MR. KRIEGER: That's my understanding.

MR. TORPEY: Any other questions? Make a motion.

MR. BEDETTI: Make a motion we schedule a public hearing for April Kean for a request for a variance for sign for Brittany Terrace at 647 Station Road in an OLI zone.

MR. KRIEGER: OLI.

MR. HAMEL: I'll second that.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

MS. JULIAN: These are your next steps.

BUTCH MACUTAY (11-15)

MR. TORPEY: Second one on the agenda Butch Macutay request for a 6 foot fence located between the principal building and the street located on 3101 Betsy Ross Ridge in an R-3 zone. Can you state your name and your address to the young lady and explain what you want to do?

MR. MACUTAY: My name is Butch Macutay, 3101 Betsy Ross Ridge, New Windsor, New York 12553. I'm applying for a variance for a fence that we're proposing to construct around the property. Essentially, my property is a corner lot right now we're fronting on Betsy Ross and I have a, one of my sides is Molly Pitcher. Right now the road that we have, I mean fronting is not constructed yet for four years now so that's why it's the reason for us to construct a fence for safety and security. The problem is that it's only allowed four feet from the street side.

MR. TORPEY: Because you have two front yards?

MR. MACUTAY: I have two front yards and the high point of the lot slopes down to the Molly Pitcher side for about 30 inches putting four feet there doesn't really lend itself because it becomes too low for safety reasons, you know. We think that it's not appropriate so we were asking for a variance because we're not really putting a privacy fence but a picket fence.

MR. TORPEY: You'll be able to see through it?

MR. MACUTAY: You can see through it and also we're also having masonry pillars in between so, you know, it provides aesthetic to the landscape and the streetscape for the property. Where it's allowed six feet is really cutting the area of our back yard essentially.

MR. TORPEY: So you're not going to be obstructing any views?

MR. MACUTAY: No, it's a see-through fence just that the height that I'm asking for a variance.

MR. TORPEY: Just for the one section?

MR. MACUTAY: Yes, just for the one section.

MR. SCHEIBLE: It's a vinyl fence, not a wooden or

vinyl?

MR. MACUTAY: Not wooden, not vinyl, it's steel ornamental fence.

MR. SCHEIBLE: Space between four inches?

MR. MACUTAY: Four inches.

MR. SCHEIBLE: How big are the one inch bars going up through it?

MR. MACUTAY: Yeah, one inch bar square.

MR. SCHEIBLE: So you're not putting it this way, if I understand you, you're not putting this in for the view but more safety fence, is that it?

MR. MACUTAY: Right.

MR. BEDETTI: Your house faces which road, Molly Pitcher?

MR. MACUTAY: No, it faces Betsy Ross which is right now still unconstructed because I guess due to the housing downturn they were not finished so the more and more I would like to have a fence around because there's really nothing that protects that side.

MR. TORPEY: I'm going to ask you these questions, you're not going to be obstructing view of cars, any traffic, you're going to be able to see around the turn?

MR. MACUTAY: No.

MR. TORPEY: Not cutting trees, vegetation?

MR. MACUTAY: No.

MR. TORPEY: Creating water hazards?

MR. MACUTAY: Yes.

MR. TORPEY: Any easements?

MR. MACUTAY: Yes, as far as the drainage everything just flows right now my back yard is all grass.

MR. TORPEY: Similar fences in the neighborhood?

MR. MACUTAY: Yeah, my neighbor also.

MR. TORPEY: Any easements, wires or easements coming through your property?

MR. MACUTAY: No.

MR. TORPEY: Fence not going near any of them?

MR. MACUTAY: No.

MR. HAMEL: How far off the road is this fence going to be?

MR. MACUTAY: From the curb about 10 feet which is the code allowable.

MR. HAMEL: From Molly Pitcher Drive?

MR. MACUTAY: Right.

MR. TORPEY: Guys got any questions?

MR. SCHEIBLE: In other words, this is a security fence?

MR. TORPEY: Like a fence, pool fence.

MR. SCHEIBLE: Security fence because I can't--

MR. TORPEY: You ain't gonna get over it.

MR. SCHEIBLE: You're not going to be able to get over it, is that what you're trying to protect yourself from people climbing over into your property?

MR. MACUTAY: Right, essentially, yes, that's the intent because the grade, the slope of the land.

MR. TORPEY: You've got two side yards.

MR. MACUTAY: I've got two side yards, yeah.

MR. TORPEY: Or two front yards.

MR. MACUTAY: Two front yards and two side yards, yeah.

MR. BEDETTI: That fence doesn't go beyond the front of the house towards Betsy Ross?

MR. MACUTAY: No.

MR. BEDETTI: The fence does not extend in front of the house towards the road on Betsy Ross, only on Molly Pitcher side?

MR. MACUTAY: Yes.

MR. BEDETTI: And the back of the house?

MR. MACUTAY: Yes.

MR. SCHEIBLE: Are there going to be any gates along this fence?

MR. MACUTAY: No gates, the gates will be on the other side.

MR. SCHEIBLE: The gates will be on which side?

MR. MACUTAY: On the front side.

MR. TORPEY: The Betsy side.

MR. SCHEIBLE: The only reason I bring that up, Mr. Chairman, is in case of emergency fire.

MR. TORPEY: He only has one gate, not a gate on this side here.

MR. SCHEIBLE: That's the reason I'm bringing that up.

MR. TORPEY: What's the one really, really close to the house? I think there is a gate here, he's got down look close to the house where the fence connects that's another swing gate.

MR. MACUTAY: We've got two gates.

MR. TORPEY: One on each side but not coming out to the road.

MR. MACUTAY: No gates coming out to the road.

MR. TORPEY: He has two gates, one coming out, you couldn't see it. Any other questions? I'll accept a motion.

MR. BEDETTI: I will make a motion that we schedule a

public hearing for Butch Macutay for a six foot fence located at the principal building located at 3101 Betsy Ross Ridge in an R-3 zone.

MR. HAMEL: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

MS. JULIAN: These are your next steps.

MR. MACUTAY: Thank you very much.

AMERICAN PETROLEUM - GIAIMO (11-6)

MR. TORPEY: Third is American Petroleum request for a proposed freestanding sign requires a variance for four foot in height and a variance for allowable square footage of a sign face is 60.5 square foot located at 204 Quassaick Avenue.

MR. GIAIMO: My name is Bob Giaimo, I'm the representative of American Petroleum, contractor for Mr. Shah or the corporate entity which he owns. What we ask to do is to install a freestanding two pole gold post sign to advertise the product that he sells, Sunoco gasoline and to hopefully increase his business to bring additional commerce and sales tax revenue for the town and himself.

MR. TORPEY: So it's going to be in the parking lot?

MR. GIAIMO: It's in the blacktop which is on his property.

MR. TORPEY: Not going to be making any road hazard or blocking views for the driver's, right?

MR. GIAIMO: No, the bottom of the sign will be above the view of a car.

MR. TORPEY: Pretty high, I see that.

MR. GIAIMO: Right.

MR. HAMEL: What's that height, there's no measurement from the ground?

MR. SHAH: Approximately, 10 feet, approximately 9 or 10 feet.

MR. HAMEL: Thank you.

MR. TORPEY: What are you going to do with all the other signs?

MR. GIAIMO: Get rid of them.

MR. SCHEIBLE: You already have two signs that are advertising gas prices, is that correct?

MR. SHAH: That's temporary, we're going to remove that.

MR. SCHEIBLE: Why would we have two signs right now, are they both going to be removed?

MR. SHAH: Yes, the one going to be like the big red one that's out and the other one is a freestanding sign.

MR. SCHEIBLE: One sign replacing the two, is that what you're saying?

MR. GIAIMO: This would be the only advertising sign.

MR. SHAH: This is the only one going to be advertising right now.

MR. TORPEY: So the red and the blue sign is not going to be there?

MR. SHAH: No, we're going to take it down, we'll maybe put it on the ground but you can put it on a stand, that's what it's going to be like.

MR. GIAIMO: Temporary.

MR. SHAH: Just temporary sign.

MR. TORPEY: There's another sign on the pole, was that one the other sign?

MR. GIAIMO: No, I think it's a three product price sign.

MR. SHAH: No, that's a coming soon sign that we're going to take down as soon as they put the other one that one is coming down.

MR. TORPEY: Why so far in?

MR. GIAIMO: State property there, there's a curb and a marker, we're probably at the edge of the property there. I don't know if I showed the--

MR. TORPEY: These are on state property?

MR. GIAIMO: I don't know that this is pretty much the easement.

MR. SHAH: Yes, this one I'm taking out and the one we have this one, this one we're going to take down, this

is a temporary sign.

MR. GIAIMO: Price sign facing.

MR. SHAH: In the whole intersection so people they can see the sign.

MR. TORPEY: So this sign is going to replace all the other signs?

MR. GIAIMO: Yes.

MR. SCHEIBLE: Do you think you're going to get more customers if you raise it four feet like you're requesting? After a while, I drive around town, I've lived here all my life and I see these signs taking over the town, just after a while they start looking outrageously high. But why do you have to raise it four feet? Do you think you can get anymore customers just by raising it four feet? Why can't we keep it down to the level that it is right now?

MR. SHAH: We don't want to keep the bottom too low so the people can't see.

MR. GIAIMO: The standard poles offered by the oil company are this height, if it's a mandate of the board we could do something, we could tell them or we'd have to cut them in the field, weld them, do something like that.

MR. TORPEY: That piece on the top where it says Sunoco is that going to be turning?

MR. GIAIMO: No.

MR. GIAIMO: Did you say something?

MR. BEDETTI: I just, my comment pretty much goes along with his thinking and I agree with everything that he said. If it's a mandate of this board, it's not a mandate of this board, it's a mandate of the code, the code says the maximum height of the sign should be 15 feet and you're asking for 19 feet. Do you need that extra four feet, is that a requirement?

MR. GIAIMO: The reason for the application.

MR. SHAH: From here to here is almost like 10 feet, if we go down the bottom of this sign is going to be real

low.

MR. TORPEY: You're afraid it's going to get vandalized?

MR. SHAH: This is going to be.

MR. TORPEY: Interfere with the traffic?

MR. SHAH: Right, because people are going to be making a turn from 94 to Union Avenue and they're not going to be able to see because of the sign.

MR. HAMEL: One of the things that I don't see on this drawing either is by the sign I think they should bollard, somebody is going to back into the sign and knock it over and it's going to hit Union Avenue.

MR. GIAIMO: That's a pretty substantial pole, sir, but, you know, if that's a requirement to add some bollards we can accommodate that, we're going to be digging a hole and putting concrete.

MR. HAMEL: I know that corner very well, I pass it every morning and going home every night so and I know there's not a lot of grass probably at the end of the lot.

MR. GIAIMO: No, it's probably about five feet or something to the Union Avenue side. I would have to say you never know what the public is going to do.

MR. HAMEL: I've seen times when there's probably been seven or eight cars in that little area in there, it's be congested at times but I do have to agree with my colleagues that I think from the ground up to the top is 19 feet, that's high.

MR. TORPEY: So you're going to be taking two signs down for just one nice one on the corner?

MR. SHAH: Yes.

MR. SCHEIBLE: I just object to the height. I object to the height of the sign. I don't see any reason why we've got to increase it by four feet beyond what is requested.

MR. TORPEY: What about your view?

MR. BEDETTI: He exits on the 94 side.

MR. TORPEY: But when you park your car at the light, when you stop at that light, you're set way back, you don't get to sit out by the road, you're going to be looking at through the underneath of that sign.

MR. BEDETTI: Yeah, this is an exit and there's an exit up here and if this were low, even if this were low, I don't see how if you're here or if you're up here how the view is being obstructed if you're coming out this way, you're looking towards the light there.

MS. JULIAN: Right here, Mr. Bedetti a car is sitting here at this traffic light, you're never going to be able to see through the sign. You sit all the way back here, this is Union Avenue.

MR. BEDETTI: Where is the stoplight?

MS. JULIAN: It's further back down the road than up from the road, it's almost back here so you're almost level with the sign so if someone's standing there they are not going to be able to see.

MR. BEDETTI: What's the height between here and there?

MR. GIAIMO: About 9 or 10 feet.

MR. TORPEY: Look at the price we're going to pay for him taking all the other signs down, the view will be much wider and open rather than having one sign.

MR. SCHEIBLE: If they're legal right now the other signs.

MR. TORPEY: Probably two. Can I ask you that question?

MR. SCHEIBLE: They may be there illegally right now so we're not paying any price to have them removed.

MR. KRIEGER: Sure but if, yes, they may be there illegally, this board legally speaking has no jurisdiction to, it's not a law enforcement agency so even though--

MR. SCHEIBLE: But have these signs been approved Mr. Attorney?

MR. KRIEGER: Not that I know of.

MR. TORPEY: But they're coming down.

MR. KRIEGER: What I'm saying, all I'm saying they couldn't mount that argument here, not saying there isn't an argument in my view quite frankly personally I think we're at least one of the signs is illegal but that's not, it's not within the jurisdiction of this board to, it has no law enforcement power to make him take the signs down.

MR. TORPEY: He's required to have one sign.

MR. KRIEGER: He's allowed to have one sign. I think they have legally speak vulnerability from two standpoints of view both the signs at least one if not both are illegal, they may also be on state property which would have them run afoul of the state as well as the town.

MR. GIAIMO: Let's say we looked at this gentleman's suggestion to lower the sign, if we did that and we were using the same format that we have we would then lower the bottom sign to probably within about six feet of the ground which a truck may, I don't think you'd see it quite that high in a vehicle but in a pickup truck you're here and sitting here, I'm less than six feet tall, it may be obstructive.

MR. TORPEY: Only cause you see the white line in the road that's how far back you see it. Do you see where the town bus is sitting there? That's how far you see it back, you don't get to go up passed to see left or right, if you sit at that white line that sign is going to be completely, he comes down four feet, you're not going to be able to see. Do you know what I'm trying to get at? I agree with you but look where the line is, do you see where the town bus is, the Dial-A-Bus? Look in front of the bus there's your white line in the road, that's how far you sit back so the tractor trailers can make the turn.

MR. SCHEIBLE: So he's heading out to 94, correct?

MR. BEDETTI: Yes.

MR. SCHEIBLE: I think you see plenty, just my feeling.

MR. HAMEL: Can I put my two cents in? Is there a

reason why we couldn't locate the sign this far over?

MR. GIAIMO: I don't think this is his property.

MR. HAMEL: Because you would still get benefit of the north south.

MR. GIAIMO: If we can put it here I think we would but I don't think that that would nor can we put it here.

MR. TORPEY: What's the measurement?

MR. GIAIMO: Approximately, 9 to 10 feet, if we took the overall height of 18'6" and took out four and five and nine a little bit more than that.

MR. KRIEGER: My suggestion is at the final hearing the board members are going to want something besides approximate, they want to know at that point they are going to want to know because that seems to be the argument.

MR. GIAIMO: We'll not go lower than eight feet.

MR. KRIEGER: I understand but this space from the bottom of the sign to the ground you're going to be asked I'm sure by the board members for an exact number and you're going to come up with a number.

MR. GIAIMO: Then I'll do that.

MR. KRIEGER: I think you'll need it for the final hearing, not for tonight.

MR. TORPEY: How high is the roof on the pumps?

MR. GIAIMO: Thirteen six.

MR. TORPEY: You can't stay in with the range of that just to make it look uniform?

MR. SHAH: It's going to be too low, I'm afraid that on the top something will happen on top because we keep it at a certain distance.

MR. TORPEY: You're going to be 41 feet up there.

MR. GIAIMO: No, this is 13 foot 6 from here to here and three foot fascia so this is 16 foot.

MR. TORPEY: But the sign is still 41 feet.

MR. GIAIMO: No, square.

MR. SHAH: Total height is 17.

MR. KRIEGER: That's another number the board members are going to want the number from the top of the sign to the ground.

MR. GIAIMO: Top of the sign to the ground we have so I can subtract these numbers and I can tell you that this dimension is approximately 9 feet, if you want an exact number I'll do that.

MR. TORPEY: For the public hearing.

MR. SCHEIBLE: You have this overhang over the pumps, the overhang over the pumps, Mr. Bedetti and I were just discussing there's a view, is there any signage on this right here? You have three sides facing the highway, the overhang there right what we're discussing here is you're looking at the problem the Sunoco sign hangs over this. Can't you replace it up into here, put a sign here and put one here and you've got another sign that gives you three areas? If you would cut this off, right, so this is four foot right here that's the four feet that we're asking for so this is still standing height, right? Is there a way of making that less than it is right now or put the Sunoco here or Sunoco here? You can have it resemble that, right, resemble that but your advertising for Sunoco would still be in affect then you're erasing the four feet that you're asking for.

MR. TORPEY: Going to be the same height as the pavilion, it would look more uniform.

MR. SCHEIBLE: He can put it on three sides, he's got three sides where he can flash the Sunoco label.

MR. GIAIMO: This square footage of this sign exists in your town in Vails Gate.

MR. SCHEIBLE: Not saying that's right.

MR. GIAIMO: Well, I'm just telling you.

MR. TORPEY: They might of went for a variance.

MR. GIAIMO: That's what we're asking for.

MR. BEDETTI: It's a different location too.

MR. GIAIMO: It's still the same zoning, isn't it?

MR. SHAH: Across the street there's a sign almost the same height across the street from me they're all the same height.

MR. GIAIMO: Lowering the sign four feet takes this down to from my approximation of 10 feet to six feet. If you're happier with that or if it meets the board's approval with that kind of look we can cut these posts, they're metal and they can be welded then we don't have a height issue. But we could have, I don't know for sure but I think you're back far enough that maybe you'll not interfere with traffic looking south on 94 towards the school and you can see north. Is that north or west?

MR. TORPEY: North.

MR. GIAIMO: North on 94, you can't see passed the cemetery going out till you're up to the sign. So I think the idea to have the Sunoco traditional Sunoco not just people in New Windsor that would shop here but travelers throughout the state and country.

MR. TORPEY: Without the Sunoco emblem the sign would be perfect, you're four feet is right there.

MR. GIAIMO: Then it wouldn't be a Sunoco sign.

MR. SCHEIBLE: You can have the Sunoco emblem on three sides there if necessary.

MR. GIAIMO: Trade marked Sunoco wants the stations to look uniform throughout the country. This is a Sunoco diamond that's existed since 1829 or something whenever Sunoco--

MR. TORPEY: I love Sunoco.

MR. GIAIMO: Good gas, my car runs on it. To get to a consensus here this is what you would rather see this dropped down this gentleman, this gentleman says they're kind of nodding acquiescing to bringing this down to that point then does the variance go away or we still have the square footage issue?

MS. JULIAN: Yes, you do.

MR. GIAIMO: So we're here for two purposes, height and square footage so if we bring this down to no higher than whatever the law allows, 15 feet.

MR. TORPEY: The height of the pavilion.

MS. JULIAN: Fifteen feet.

MR. GIAIMO: So we're going to 18'6" and we're going to drop it 3'6" so it's under 15 feet, right?

MR. SCHEIBLE: If you dropped it 3.6 you said?

MR. GIAIMO: Yes.

MR. SCHEIBLE: You're still too high from my arithmetic.

MR. GIAIMO: Eighteen six minus three, six is whatever it is we can do the math and make it exact.

MR. TORPEY: What about vandalism being so low, kids?

MR. SCHEIBLE: Do you think kids are going to care if it's 19 feet high or six feet high? If they want to vandalize it, they'll vandalize it.

MR. GIAIMO: We have a good police force in the town. Have you had any vandalism problems?

MR. SHAH: Not yet.

MR. TORPEY: Anymore questions?

MR. BEDETTI: What does it change the square footage to if you drop that?

MR. GIAIMO: Doesn't.

MR. BEDETTI: If they calculate like they have other ones square box that goes from the highest point?

MR. GIAIMO: Square footage of the sign will not change if we drop this down.

MR. TORPEY: Because the Sunoco emblem is taking up the footage.

MR. BEDETTI: You didn't eliminate that.

MR. TORPEY: They can eliminate that and leave the sign the same height or leave it.

MR. GIAIMO: We want it to look like that, that's what Sunoco wants to see.

MR. SHAH: The other sign, this one it comes out very low because I don't want to go too low, that's the reason I'm removing this part only this much plus I'm removing this sign also just to keep it a little bit high so whatever the board thinks if somebody smashes that it's not cheap, it's going to be very expensive.

MR. GIAIMO: What we have asked for is kind of a nationally recognized, it does not fit with the zoning for this area so we came to the zoning board for advice and consent. I think there's, I'm speaking for you maybe I shouldn't be but there's some give and take here, if there's some give and take.

MR. SHAH: If you want me to go a little bit lower.

MR. GIAIMO: It's either got to be below 15 feet or we go where it fits, anything different it doesn't matter, right, it's still out of variance. Is this the recommendations that we're getting?

MR. TORPEY: We're going to schedule a public hearing and then at the, at the public hearing then we'll go over the whole thing and that will be your decision of the board.

MR. KRIEGER: The purpose of the preliminary meeting which is not required by law but which is the custom of this board is to allow the board to see what the application is ahead of time and to allow you the chance to take, to see which way the board is going. Many times it's just one hearing, just one public hearing and if you're out of step in any way then with the board you're done, this gives you a chance.

MR. TORPEY: This is a public hearing, you can go for it or you can listen to us and change a couple little things and make it work together.

MR. GIAIMO: Well, we're scheduled hopefully we'll be scheduled for a public hearing in two weeks so at the

public hearing if there's no public comment, the board makes the decision to grant the variance or not grant the variance based on what we have submitted or based on changes we would discuss at that time.

MR. TORPEY: Yes, and there will be a full board then.

MR. KRIEGER: Based on what the application is at that point, not necessarily at this point but at that point.

MR. GIAIMO: Okay, so we would have to amend our application in some way.

MR. BEDETTI: I would take issue with that because I mean if the night of the public hearing they make all kinds of changes that were never made available to the public I think that would be a violation of our procedure.

MR. KRIEGER: Yeah, we'd--

MR. BEDETTI: Now if you can make adjustments of some kind so that when you do come to the meeting you can present those adjustments or let them know before the meeting.

MR. KRIEGER: Yeah, I think what Mr. Bedetti is referring to is the fact that before you have a public hearing and it has to by law decide everything after a public hearing it's not optional before a public hearing gets advertised to the public both by mail and by placement in the paper at the conclusion of this hearing the secretary to the board has a sheet which will outline those requirements.

MR. GIAIMO: She mails them out to the neighboring public.

MR. KRIEGER: But you're then bound by what's in not necessarily what's in the application tonight but what's in the mailings and that notice that goes out if there is a substantial change between the time that there's the notice provision the mailing and public hearing, yes, the members are correct, the public will not have had notice and you're pretty much locked into the application as it exists when you send the notice out.

MS. JULIAN: But if he sends the notice out as is requesting four feet for height variance overall of

19 feet and he decides to chop that four feet off, he's still good, right?

MR. KRIEGER: If he decides to ask for less, he can ask for less.

MS. JULIAN: He can't ask for more.

MR. BEDETTI: He can conform to the law.

MS. JULIAN: Right, but the public notice can go out as is now if you decide it's okay, you just can't go higher.

MR. SHAH: In other words, we can't increase anything.

MR. GIAIMO: If we took a vote now, we wouldn't do so well so we have to think what the suggestions that are made and make the decision based on that from what we have heard from board members.

MR. KRIEGER: So that you're aware, membership of the Zoning Board of Appeals is authorized by law to be up to five members. If they have three, there are four here tonight, I'm not a member of the board, if they have three or more they have a quorum and they can hold it. For your variance to succeed whatever the request turns out to be you need three positive votes. If there are only three members, you need all three. If there are four members, you need three out of four, five, if there are five you need three out of five but you need three.

MR. GIAIMO: So I think that's pretty clear, if we're going to make changes we need to do that before the public hearing. Is that the gist of it?

MR. TORPEY: It's up to you.

MR. GIAIMO: If we make changes--

MR. KRIEGER: Especially if you're going to increase.

MR. GIAIMO: No, we're looking to find consensus among the board what's satisfactory with zoning and what would be allowable as the variance. So far I haven't heard exactly what that is but I think I can. These gentlemen have made suggestions so we'll have to take that and do what we think is right.

MR. TORPEY: Any other questions? Make a motion.

MR. BEDETTI: I will make a motion that we schedule a public hearing for American Petroleum for the request for a four foot variance and 60.5 square foot sign located at 204 Quassaick Avenue in an NC zone.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

MS. JULIAN: Those are your next steps for your mailing tomorrow or else I can't get it on the next meeting.

MIRA BLYTHE (11-17)

MR. TORPEY: Last and final is Mira Blythe. Do I need to explain everything to you?

MRS. BLYTHE: No, I assume that you know I'm Mira Rumsey, right? I own the High Street garage and you probably certainly you Hank probably remember my dad, Charlie Rumsey, Rumsey Oil, that's where Rumsey Oil started, it went through a series, after we got rid of the oil company, went over into auto repair and Unkie, Richard Gayton got his start there, of course Nicole her family's been at my site at some time. The whole purpose of me being here tonight is because we do auto repairs there. I went through an interpretation back in 2005 to make sure that I was legal, grounded everything for auto repairs, I do not do sales, okay, we did not do used or new sales. We do auto repair. A portion of auto repair is towing as you know, Mr. Torpey, and I just want to and I've got somebody new coming in as a potential tenant and as you know, you want to make sure you've got everything done before someone prints up his business cards and then you have a problem. So the whole reason I'm here tonight is to make it, make sure I've got everything, all my ducks in a row for towing.

MR. KRIEGER: Has it been continuously used for towing since before January 1, 1966?

MRS. BLYTHE: No because dad was there.

MR. KRIEGER: Oh, yes, yes.

MR. KRIEGER: Did he do towing?

MRS. BLYTHE: That's right.

MR. KRIEGER: If at the time of the public hearing and I say again this board by law has to act at a public hearing at the time of the public hearing if you have, you were here when I spoke to the first lady on the agenda, same thing would apply here, if you get a witness and that witness is found to be credible by the Zoning Board of Appeals they can decide that your use predates zoning.

MR. TORPEY: It's got to go back to 1966.

MR. KRIEGER: Yes, what would be required prior to

January 1, 1966, one, and continuously been used for that purpose ever since.

MRS. BLYTHE: Right.

MR. TORPEY: Can it be part of her family?

MR. KRIEGER: I don't care, it can be part of the family, it can be anybody.

MRS. BLYTHE: This is what was my original application for the interpretation back in 2005 and in here I didn't give it to you for tonight cause I know I'm really just looking for a public hearing but this is the time line of everything that took place at that location since 1952 when my father, grandfather and half of New Windsor built that building and all of it had to do with exactly what you're saying.

MR. KRIEGER: Sixty thousand dollar question is going to be you're looking for towing permission, whether there was towing done there during that period of time and you'll need, to be legally sufficient you'll need a witness to testify to that so the board is entitled to see the witness and hear the witness cause they have to make an assessment as to the credibility of the witness.

MR. TORPEY: This has been going on for a long time.

MR. KRIEGER: It can be anybody, as a matter of fact.

MRS. BLYTHE: I can't reincarnate my dad from the dead. What am I going to do?

MR. KRIEGER: Do you personally have knowledge that it's been in continuous operation since then?

MRS. BLYTHE: Yes.

MR. KRIEGER: You can be the witness if you have that knowledge.

MR. TORPEY: I have been there 22 years and I have been bringing my trucks there when what's his name was there, I've been going to that place for 22 years as repair and body work and towing.

MRS. BLYTHE: If you look at pictures, you'll see whose tow truck is in the picture, dad's tow truck.

MR. KRIEGER: Apparently, you can be a witness.

MR. BEDETTI: I'm not quite clear, this is an auto repair shop?

MRS. BLYTHE: Now, yes.

MR. BEDETTI: And it has always been an auto repair shop?

MRS. BLYTHE: Initially, it was built in 1952 for Rumsey Oil Company when it was, when dad was there, my grandfather and everything, of course they had tow trucks there, they had to fix their own trucks, I mean, back in 1952 wasn't like today.

MR. BEDETTI: So number one, that's a pre-existing non-conforming use?

MR. KRIEGER: Yes, so that would be the first thing they'd ask for status and pre-existing non-conforming use.

MR. BEDETTI: I'm not done yet. Now I want to tie the towing part in. Is the towing, you go out, somebody's car becomes disabled, you're going to pick it up so you can repair it?

MRS. BLYTHE: Right.

MR. BEDETTI: It's not just a straight towing, I mean, there's a crash, the cops are called to tow the car then you're going to take it to the junk yard?

MR. TORPEY: What you're saying is it's going to be a body shop or actual repair?

MR. BEDETTI: Not just body shop.

MRS. BLYTHE: Body shop implies painting, no.

MR. BEDETTI: That's a no?

MRS. BLYTHE: This is repair and I'm not saying sales, we had an issue do they sell, no, this is, you tow it there, you repair it there and they pay you, somebody picks it up.

MR. BEDETTI: So the towing portion is just another

tool for the body shop to go out and get the car that needs to be repaired?

MRS. BLYTHE: It's an integral part of the business.

MR. BEDETTI: Not to incorporate like he does towing, he chases wrecks around and does towing, it's not that kind of towing?

MRS. BLYTHE: No.

MR. TORPEY: It's not like Econo where he tows cars in and doesn't repair them.

MR. BEDETTI: Now, as far as what about parking, again, this is a residential area, apparently it's got an R residential designation, where do you park?

MRS. BLYTHE: You wouldn't say it was residential if you went there. It is but--

MR. TORPEY: But that building was there before zoning.

MRS. BLYTHE: If you look at this building, I'm looking at this upside down but can you see that right next to the building is an open space here which is for parking and that's where there's cars parked there. Does that help you at all?

MR. BEDETTI: Well, no, because it's still an R-4 zone, it's still designated I understand since 1966 but this towing thing, I'm still trying to fit the towing, if this towing was a new business, just going to be doing towing for towing sake, not necessarily for repair. That's a different, to me, that's bringing another business into the residential.

MRS. BLYTHE: That's not what we're doing.

MR. BEDETTI: That's--

MRS. BLYTHE: What we're doing we're cleaning this up because someone said to me this guy that's interested in coming there he says look, I don't want any problems with the town, he says I want to know that I can do towing there. I mean, this is a gray area, isn't this correct, it's a gray area so that's why I'm here.

MR. BEDETTI: Well, Torpey's in a gray area.

MR. TORPEY: Everything I do I have to go through because I'm not supposed to be there.

MR. BEDETTI: Right.

MRS. BLYTHE: That's exactly what my situation is exactly.

MR. BEDETTI: Where would this gentleman be storing his towing vehicles?

MR. TORPEY: He wouldn't be, they are only getting towed there to get repaired.

MR. BEDETTI: I didn't know that.

MR. TORPEY: Well, she explained that to me already.

MR. BEDETTI: I'm sorry I missed that explanation. But not going to have any towing equipment on that piece of property?

MRS. BLYTHE: Well, listen, I can't say it will never be but I've got to be, listen, you're asking me a question like I can't say never.

MR. TORPEY: If you have a repair shop, you're allowed to have a tow truck, it's, a tow truck is part of your tool like if Mike Babcock was sitting here, he gave me that big lecture already at one time, it's just part of the business, it's a package.

MRS. BLYTHE: Right.

MR. TORPEY: She's not doing repos, pulling cars in there and parking them.

MR. BEDETTI: So the towing business is not there right now?

MRS. BLYTHE: Well, it was there, it's been there continuously but it hasn't been there like I said there's like this gray area in terms of interpretation, can you do it, can't you do it, that's why I'm here.

MR. BEDETTI: I just wanted to find out what you're doing at that location now and what your current plans are. Your current plans are to have somebody come in and do towing for the business?

MRS. BLYTHE: Cars are towed there now.

MR. TORPEY: Application seeks interpretation that the garage auto repair at 7 High Street permits towing and storage of vehicles for repair and the parking of tow vehicles. So she is asking for permission to park a tow truck there.

MR. BEDETTI: Is there a problem with me asking this lady?

MR. TORPEY: No.

MR. BEDETTI: I'm glad I got your permission to do that. Okay, thank you.

MR. SCHEIBLE: Now, just a followup on what Mr. Bedetti was just saying to you. The towing it's basically going to be a towing business? I have to interpret this for myself.

MRS. BLYTHE: And repair.

MR. SCHEIBLE: And repair.

MRS. BLYTHE: And it's currently repair, they tow, do you know, like some people bring their car there for repairs now sometimes cars are towed there for repair.

MR. SCHEIBLE: Well, the first thing that comes to my mind in the tow truck business right when you go to an accident you pick up a wrecked car and you bring it back. Now what you just said was that you're not going to be doing any body shop work but my interpretation of a tow truck every time I see a tow truck I think of them racing to an accident, picking up the wrecked car and bringing it back somewhere so that interprets it into a body shop.

MR. TORPEY: We don't get to race there.

MR. SCHEIBLE: Race, run or crawl, you're coming back with a wrecked vehicle. I'm just interested.

MRS. BLYTHE: I can tell you what's there now, there's two bays there now, there's no paint room, okay, so when you talk about body repair, I just want to be clear there will not be a paint room there now so they bring it back, they repair it, not necessarily always from a crash, I mean, you break down on the side of the

road, you bring it back there, you repair it. I can't give you every instance that would happen cause I don't know but I would say that the intent is not for used car sales to get junk cars, it's not for painting of cars, it's for repair and the towing, obviously storing the car until somebody gets the money to get it, that kind of business.

MR. SCHEIBLE: For a long time?

MRS. BLYTHE: Depends on the type of business man you are.

MR. TORPEY: How many houses are on that road?

MRS. BLYTHE: Four, five, yes.

MR. TORPEY: That's it?

MRS. BLYTHE: Yes, Radolski (phonetic), Kearney (phonetic), somebody just bought what used to be the Pardy house, as you probably remember not party and Neclario. Probably any one of them can testify to the fact that there's always been towing done there cause I don't think anybody's moved off that street.

MR. KRIEGER: There you go, you have your witnesses.

MR. TORPEY: Any other questions?

MR. SCHEIBLE: I'm just going to drive by, take a look.

MRS. BLYTHE: Feel free.

MR. SCHEIBLE: That's my intention.

MR. BEDETTI: Are we going to have a public hearing?

MR. KRIEGER: Yes, you have to have a motion.

MR. HAMEL: I make a motion that we schedule a public hearing for Mira Blythe for the variance as requested.

MR. BEDETTI: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE

MR. TORPEY AYE

MS. JULIAN: Mira, this is for you for the public hearing.

MRS. BLYTHE: When will it be?

MS. JULIAN: If you come in to me tomorrow, it will be at the July 11 meeting.

MR. TORPEY: Motion to adjourn?

MR. SCHEIBLE: So moved.

MR. BEDETTI: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

Respectfully Submitted By:

Frances Roth
Stenographer